

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN

THE WEATHER UNDERGROUND, INC.,  
a Michigan corporation,

Plaintiff,

vs.

Case No. 2:09-CV-10756  
Hon. Marianne O. Battani

NAVIGATION CATALYST SYSTEMS, INC.,  
a Delaware corporation; BASIC FUSION, INC.,  
a Delaware corporation; CONNEXUS CORP.,  
a Delaware corporation; and FIRSTLOOK, INC.,  
a Delaware corporation,

Defendants.

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Enrico Schaefer (P43506)  
Brian A. Hall (P70865)  
TRAVERSE LEGAL, PLC  
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Traverse City, MI 49686  
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Lead Counsel for Defendants

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**NOTICE OF INTENT TO SERVE SUBPOENA ON NON-PARTY**

Pursuant to the provisions of F.R.Civ.P. 45, Plaintiff The Weather Underground, Inc., intends to serve the attached subpoena on Netflix, Inc., a non-party to this action, for the production of documents.

Respectfully submitted this 1<sup>st</sup> day of February, 2010.



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734-662-4426  
[apatti@hooperhathaway.com](mailto:apatti@hooperhathaway.com)

Attorneys for Plaintiff

### CERTIFICATE OF SERVICE

I state that I am employed by the law offices of Traverse Legal, PLC, attorneys for Plaintiff herein, that I served the attached **NOTICE OF INTENT TO SERVE SUBPOENA ON NON-PARTY** (Case Number 2:08CV10756, United States District Court for the Eastern District of Michigan) upon the parties listed below by email and U.S. Mail, postage paid, on this 1<sup>st</sup> day of February, 2010:

Enrico Schaefer (P43506)  
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[steffans@butzel.com](mailto:steffans@butzel.com)  
Local Counsel for Defendants



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Catherine Dittrich

February 1, 2010

Custodian of Records  
Netflix, Inc.  
100 Winchester Circle  
Los Gatos, CA 95032

Re: **The Weather Underground, Inc., v. Navigation Catalyst Systems, Inc.**  
**U.S. District Court for the Eastern District of Michigan Case No. 02:09CV10756**

Dear Sir/Madam:

Please find enclosed a Subpoena regarding documents necessary to the referenced action. Note that the Subpoena primarily requests information concerning typographical variations of your primary domain name **netflix.com** registered by the Defendant, Navigation Catalyst Systems ("NCS"), in the above case. By way of background information, find included with this letter information regarding the typo domains as follows:

1. netflix.com first registered with NCS on approximately 02-19-2007 and last registered with NCS on approximately 01-27-2010 (see attached WhoIS History for 01-25-2010). Also attached is a screen shot of the WhoIS Record.

We are committed to cooperate with you to ensure that the documents are reasonably identifiable and to avoid unnecessary expense or burden. Please contact me directly to discuss this Subpoena and suggestions regarding the method of production. Note, as an alternative to the production location on the Subpoena, you are invited to produce the documents directly to my office as follows:

Traverse Legal, PLC  
810 Cottageview Drive, Unit G-20  
Traverse City, MI 49684

February 1, 2010

Page 2 of 2

I look forward to answering any questions you might have.

Sincerely,

TRAVERSE LEGAL, PLC

A handwritten signature in dark ink, appearing to be 'E. Schaefer', written in a cursive style.

Enrico Schaefer

[enrico@traverselegal.com](mailto:enrico@traverselegal.com)

ES/cad

Enclosures

cc: William Delgado (w/enc.)

Show Summary View

enrico1999 Logout | My Account

- Whois | Domain Search | Domain Suggestions | For Sale | Sales History | Auction Search | Domain Monitor | Domain Directory | Ping | Traceroute | My IP Address | Domain Parking | Cheap Domain Name Registration | Bulk Check | Domain Typo Generator | more>
- Power Tools: Reverse IP | Domain History | Mark Alert | Name Server Spy | Hosting History | Registrant Search | Registrant Alert

Ads by Google

VZWPIX Pictures and Video

Enter Cell # To Access VZWPIX Get Your VZWPIX Instantly!  
VZWPIX.MobileStomp.com

Register Domain Names

Find & Register Domains For \$8.95 At Register.com. Limited Time Only!  
Register.com

BuyDomains: Official Site

Search for Premium Domain Names. 1000's of Choices at BuyDomains.com  
www.BuyDomains.com

NeftFlix.com Whois Record ( Neft Flix )

Domain Name

Whois

- Whois Record
- Site Profile
- Registration
- Server Stats
- My Whois

Whois Record

Related Domains For Sale or At Auction

- NeftEk.com (\$388)
- NeFair.com (\$439)
- TheOneForMe.com (\$1,988)

Registrant Search: "Navigation Catalyst Systems, Inc" owns about 212,403 other domains  
Email Search: domainadmin@navigationcatalyst.com is associated with about 270,770 domains  
Registrar History: 4 registrars with 2 drops.  
NS History: 8 changes on 6 unique name servers over 4 years.  
IP History: 33 changes on 15 unique name servers over 5 years.  
Whois History: 15 records have been archived since 2007-02-19 .  
Reverse IP: 450,777 other sites hosted on this server.

DomainTools for Windows®  
Now you can access domain ownership records anytime, anywhere... right from your own desktop! Find out more >

Registrant:  
Navigation Catalyst Systems, Inc  
2141 Rosecrans Ave.  
Suite 2020  
El Segundo, CA 90245  
Email: domainadmin@navigationcatalyst.com  
Phone: 3106471592  
Fax: 3106476001

Domain Name: NEFTFLIX.COM

Administrative Contact:  
Navigation Catalyst Systems, Inc  
2141 Rosecrans Ave.  
Suite 2020  
El Segundo, CA 90245  
Email: domainadmin@navigationcatalyst.com  
Phone: 3106471592  
Fax: 3106476001

Technical Contact:  
Navigation Catalyst Systems, Inc  
2141 Rosecrans Ave.  
Suite 2020  
El Segundo, CA 90245  
Email: domainadmin@navigationcatalyst.com  
Phone: 3106471592  
Fax: 3106476001

Billing Contact:  
Navigation Catalyst Systems, Inc  
2141 Rosecrans Ave.  
Suite 2020  
El Segundo, CA 90245  
Email: domainadmin@navigationcatalyst.com  
Phone: 3106471592  
Fax: 3106476001

Record expires on 1/25/2010  
Record created on 1/25/2006  
Database last updated on 1/13/2010

Domain servers:

Thumbnail:



Country TLDs	General TLDs
<input type="checkbox"/> NeftFix.at	<a href="#">Buy</a>
<input type="checkbox"/> NeftFix.ch	<a href="#">Buy</a>
<input type="checkbox"/> NeftFix.cn	<a href="#">Buy</a>
<input type="checkbox"/> NeftFix.co.uk	<a href="#">Buy</a>
<input type="checkbox"/> NeftFix.de	<a href="#">Buy</a>
<input type="checkbox"/> NeftFix.dk	<a href="#">Buy</a>
<a href="#">Show all (17) &gt;</a>	
<a href="#">Buy all selected &gt;</a>	

enrico1999 Logout | My Account

Whois | Domain Search | Domain Suggestions | For Sale | Sales History | Auction Search | Domain Monitor | Domain Directory |  
Ping | Traceroute | My IP Address | Domain Parking | Cheap Domain Name Registration | Bulk Check | Domain Typo Generator | more> |  
Power Tools: Reverse IP | Domain History | Mark Alert | Name Server Spy | Hosting History | Registrant Search | Registrant Alert

## NeftFlix.com on 2010-01-27 - Domain History

Enter a domain name to get its history

Domain Name:

« Previous

**Domain:** [NeftFlix.com](#) - Domain History

**Cache Date:** 2010-01-27

**Registrar:** BASIC FUSION, INC.

**Registrant Search:** Click on an email address we found in this whois record to see which other domains the registrant is associated with:  
[domainadmin@navigationcatalyst.com](mailto:domainadmin@navigationcatalyst.com)

**Registrant:**

Navigation Catalyst Systems, Inc  
2141 Rosecrans Ave.  
Suite 2020  
El Segundo, CA 90245  
Email: [domainadmin@navigationcatalyst.com](mailto:domainadmin@navigationcatalyst.com)  
Phone: 3106471592  
Fax: 3106476001

Domain Name: NEFTFLIX.COM

**Administrative Contact:**

Navigation Catalyst Systems, Inc  
2141 Rosecrans Ave.  
Suite 2020  
El Segundo, CA 90245  
Email: [domainadmin@navigationcatalyst.com](mailto:domainadmin@navigationcatalyst.com)  
Phone: 3106471592  
Fax: 3106476001

**Technical Contact:**

Navigation Catalyst Systems, Inc  
2141 Rosecrans Ave.  
Suite 2020  
El Segundo, CA 90245  
Email: [domainadmin@navigationcatalyst.com](mailto:domainadmin@navigationcatalyst.com)  
Phone: 3106471592  
Fax: 3106476001

**Billing Contact:**

Navigation Catalyst Systems, Inc  
2141 Rosecrans Ave.  
Suite 2020  
El Segundo, CA 90245  
Email: [domainadmin@navigationcatalyst.com](mailto:domainadmin@navigationcatalyst.com)  
Phone: 3106471592  
Fax: 3106476001

Record expires on 1/25/2010

Record created on 1/25/2006

Database last updated on 1/13/2010

**Domain servers:**

dpns1.dnsnameserver.org  
dpns2.dnsnameserver.org  
dpns3.dnsnameserver.org  
dpns4.dnsnameserver.org

# UNITED STATES DISTRICT COURT

for the

Northern District of California

The Weather Underground, Inc.

*Plaintiff*

v.

Navigation Catalyst Systems, Inc.

*Defendant*

Civil Action No. 2:08CV10756

(If the action is pending in another district, state where:

Eastern District of Michigan

## SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES

To: Custodian of Records, Netflix, Inc., 100 Winchester Circle, Los Gatos, CA 95032

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: SEE EXHIBIT A ATTACHED.

Place: Esquire Solutions, Inc.  
440 Montgomery Street, Suite 1100  
San Francisco, CA 94104 (415-591-3333)

Date and Time:

03/01/2010 09:00

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date:

2/1/10

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk*

*Attorney's signature*

The name, address, e-mail, and telephone number of the attorney representing (name of party)

The Weather Underground, Inc.

, who issues or requests this subpoena, are:

Traverse Legal, PLC, 810 Cottageview Drive, Unit G-20, Traverse City, MI 49684 (231) 932-0411



Civil Action No. 2:08CV10756

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the subpoena on the individual at *(place)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_; or

☐ I left the subpoena at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the subpoena to *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because \_\_\_\_\_; or

☐ other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

## Federal Rule of Civil Procedure 45 (c), (d), and (e) (Effective 12/1/07)

### (c) Protecting a Person Subject to a Subpoena.

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

#### **(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

#### **(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

### (d) Duties in Responding to a Subpoena.

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

#### **(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

## EXHIBIT A

### Definitions:

**"Typo Domains"** means *neftflix.com*.

The words **"You"** and **"Your"** as used herein refer the company receiving this subpoena and any and all parent companies, subsidiaries, affiliated entities and divisions which are reasonably likely to have information related to the Requests below.

**"NCS"** means **Navigation Catalyst Systems, Inc.** (the Registrant/Owner of the Typo Domains for the periods indicated), **Basic Fusion, Inc.** (the Registrar for the Typo Domains and a related company to NCS), **FirstLook, Inc.** (the company that provides the software which displays advertisements on the Typo Domains) and **Connexus Corp** (The parent company of NCS, Basic Fusion and First Look).

**"Document(s)"** means all written, paper or digital information no matter how stored.

### Requests:

1. Any and all Documents which reflect or establish trademark registrations related to *neftflix.com*, *neftflix.net*, and *neftflix.org* and/or **NETFLIX** and/or variations thereof.
2. Any and all Documents reflecting permission or license granted by You to NCS, which would (a) allow them to register/own the Typo Domains or (b) display paid advertisements on the web pages displayed on the Typo Domains.
3. Any and all Documents indicating whether You were aware of NCS's registration of the Typo Domains.
4. Any and all notice, cease and desist and/or threat letters sent by You to NCS regarding assertions or allegations of trademark rights, trademark infringement, trademark dilution or cybersquatting concerning the Typo Domains or any other domains registered by NCS.
5. Any and all Documents reflecting communication between you and NCS regarding any domain name or trademark issue.
6. Any and all lawsuits, arbitrations or other adversarial proceedings brought by You against NCS either related or unrelated to the Typo Domains.